

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(a). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115(a).

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FOUR

PHILIP CHRUDIMSKY,

Plaintiff and Appellant,

v.

WILLIAM CHRUDIMSKY, JR.,

Defendant and Respondent.

B287035

(Los Angeles County  
Super. Ct. No. VC064045)

APPEAL from an order and judgment of the Superior Court of Los Angeles County, Kevin Brazile, Judge, Mary Thornton House, Judge (Ret.). Affirmed.

Manning & Kass, Ellrod, Ramirez, Trester, Scott Wm. Davenport for Appellant.

The Walker Law Firm, Joseph A. Walker for Respondent.

## INTRODUCTION

Plaintiff and Appellant Philip Chrudimsky sued his brother, Defendant and Respondent William Chrudimsky, alleging William<sup>1</sup> acted improperly as trustee of their mother's trust by, among other things, conveying to himself real property (the Luxor Property) that was a trust asset.

Philip's sole contention on appeal is the trial court erred in transferring the case from the Civil Division to the Probate Division,<sup>2</sup> thereby denying him of what he asserts is his constitutional right to a jury trial.<sup>3</sup> We conclude Philip waived

---

<sup>1</sup> Because the parties have the same last name, we refer to the parties by their first names.

<sup>2</sup> Philip's brief refers to the "Probate Department" or "Probate Court." The Los Angeles County Superior Court rules use the phrase "Probate Division," and we will use that terminology. His brief also mischaracterizes the transfer as being from the Civil Division to the Probate Division. Actually, the transfer was from the Southeast District of the Los Angeles County Superior Court, where the case had been filed, to the Central District. The case was then assigned to the Probate Division.

<sup>3</sup> Philip plainly had no statutory right to a jury trial in the Probate Division. Probate Code section 825 provides there is no right to a jury trial in probate proceedings unless expressly provided in the Probate Code. (Prob. Code § 825.) Probate Code section 17006 states "[t]here is no right to a jury trial in proceedings . . . concerning the internal affairs of trusts." (Prob. Code § 17006.) For the reasons discussed below, we agree with the Superior Court that the allegations in the complaint concern the internal affairs of a trust and the matter was appropriately assigned to the Probate Division.

the issue by failing to make a reasoned argument that he was constitutionally entitled to a jury trial. Accordingly, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Philip's complaint alleges causes of action against William, in his capacity as trustee as well as individually, for breach of fiduciary duty, accounting, quiet title, and rescission of what Philip contends is a void quitclaim deed. The complaint asserts misconduct by William both before and after their mother's death, and that William "usurped control of the [trust] since the death of [their mother]." More specifically, the complaint argues that before their mother's death "there were numerous ostensible transfers or attempted transfers of real and personal property which . . . are not valid transfers," "there was money in one or more [trust] accounts, or . . . which belonged to the [trust], to which [Philip] is entitled and which [William] has failed and refused to account for." The complaint further asserts their mother "intended that the Luxor Property be held in the [trust]," and "[Philip] seeks a fair and even distribution of all of the trust assets, . . . according to the intentions of [their mother], as identified in the [trust]."

William filed a demurrer to the complaint, contending the superior court lacked subject matter jurisdiction. The court sustained the demurrer without leave to amend, reasoning Probate Code section 17000, subdivision (a) provides exclusive jurisdiction to the Probate Division over matters pertaining to the internal affairs of a trust. Philip filed a motion for reconsideration, which the court granted. The court concluded the superior court did not lack subject matter jurisdiction over

Philip's claims, but reaffirmed its conclusion that the matter should be heard in the Probate Division. The court explained it was without authority, however, to transfer the action to the Central District. It advised William to file a motion to transfer the matter in Department 1 of the Stanley Mosk Courthouse, in the court's Central District.

William filed a motion to transfer in Department 1. Judge Kevin Brazile, then the Supervising Judge of the Civil Division (and currently Presiding Judge of the Los Angeles County Superior Court), granted the motion, explaining "a review of the case's complaint . . . confirms that the gravamen of the action involves the internal affairs of a trust." The matter was transferred to the Central District, assigned to the Probate Division, and proceeded to a bench trial. The court (the Hon. Mary Thornton House, presiding) entered judgment in favor of William, from which Philip appeals.

## **DISCUSSION**

Code of Civil Procedure section 402, subdivision (a)(1) provides, in relevant part, "[a] superior court may specify by local rule the locations where certain types of actions or proceedings are to be filed." A local rule in Los Angeles states (with exceptions not relevant here) "[a]ll Conservatorship, Guardianship, Probate, and Trust proceedings must be filed in the [Central District] . . . ." (Super. Ct. L.A. County, Local Rules, rule 2.3(a)(1).) Philip contends this matter was not a trust proceeding because the gravamen of the action is to quiet title to the Luxor Property and that property was not held by the trust at the time of their mother's death. We disagree with Philip.

Although the Luxor Property was no longer held by the trust at the time Philip filed the complaint, the action nevertheless involves the internal affairs of a trust. Philip's breach of fiduciary duty claim is premised on several Probate Code sections, including a trustee's duty to administer the trust according to the trust instrument (§ 16000), duty of loyalty to the beneficiaries (§ 16002), and duty to notify the beneficiaries of various changes affecting the trust (§ 16061.7, subd. (a)). Philip alleged William "acted in his own self interest by transferring title to the Luxor Property in his own name" despite their mother's intention for the "Luxor Property in the [trust] to be shared by both of her sons." Philip's second cause of action sought an accounting of the trust's assets because William allegedly "appropriated large sums of money in excess of [William's] one-half share from the assets of the [trust]." The third and fourth causes of action for quiet title and rescission of void quitclaim deed alleged Philip is an owner of the Luxor Property as a beneficiary of the trust. Additionally they allege William unlawfully conveyed the Luxor Property to himself.

Despite the complaint's allegations concerning William's alleged improper acts as trustee, Philip argues it is "wholly improper" for a probate department to adjudicate a dispute over property not part of a decedent's estate. The case he cites for this proposition, however, did not involve a dispute over real property transferred from a trust. (See *Estate of Jimenez* (1997) 56 Cal.App.4th 733, 740 [holding the probate court was without jurisdiction to hear a dispute between siblings regarding their deceased mother's remains because the "body of one whose estate is in probate unquestionably forms no part of the property of that estate"].) Philip also relies on *Harnedy v. Whitty* (2003) 110

Cal.App.4th 1333, which is also inapposite. There, the court held even in a county with a formal probate division, a nonprobate division does not lack fundamental jurisdiction over a probate matter. (*Id.* at 1344.)

But the issue here is whether the court erred in assigning the matter to the Probate Division, not whether a judge within the Civil Division also had jurisdiction. We agree with the trial court that “The gravamen of the action involves the internal affairs of a trust.” Assignment to a courtroom within the Probate Division therefore was appropriate. And Philip had no statutory right to a jury trial under Probate Code section 17006.

Moreover, even if we concluded the court erred in assigning the matter to the Probate Division, reversal is only warranted if it prejudiced Philip. Philip contends he was prejudiced because he was denied a jury trial. He asserts, without reasoned argument or citations to authority, that he had a constitutional right to trial by jury.

Our state Constitution grants a jury trial right “where the *gist* of the action is legal,” but not where “the action is essentially one in equity and the relief sought ‘depends upon the application of equitable doctrines.’” (*Shaw v. Superior Court* (2017) 2 Cal.5th 983, 993-995.) It is not always easy to tell the difference.

Whether a particular cause of action is triable to a jury may depend on whether it – or a historical analog – could be tried to a jury when our state Constitution was adopted, or previously was tried in a court of law or equity. (See, e.g., *Brown v. Mortensen* (2019) 30 Cal.App.5th 931, 939-940 [summarizing jury trial right under our state constitution].)

Here, Philip’s complaint challenges the administration and distribution of assets from a trust. He concedes that all of his

causes of action are equitable claims, except his claim for breach of fiduciary duty against William. But that claim, too, seems – at least at first blush – equitable in nature. Granted, some claims against a trustee may be legal in nature and the right to a jury trial may attach. To “maintain an action at law, the liability of the trustee must be definite and clear, with no accounting necessary to establish it, such as where the trustee is under an immediate and unconditional duty to pay money to the beneficiary. An action at law also may be maintained if an accounting has been had and the balance due the beneficiary completely ascertained. [¶] . . . [¶] Where an accounting is required, the action is equitable. An accounting is necessary where the fiduciary becomes liable for various sums of money and plaintiffs do not know what money is due them.” (*Van de Kamp v. Bank of America* (1988) 204 Cal.App.3d 819, 864, citations omitted.) William’s liability, if any, was far from clear before trial. Philip sought an accounting to ascertain how much was owed to him. These factors indicate Phillip’s breach of fiduciary duty cause of action is equitable rather than legal. (*Ibid.*) Moreover, where, as here, the action is concerned with the terms, conduct, and management of the trust, and plaintiff challenges the trustee’s stewardship of trust property, the action is equitable rather than legal. (*Id.* at p. 865.) (See also Rest.2d Trusts, §§ 197 – 198.)

Philip provides no guidance on the critical considerations underlying the constitutional question. Instead, he simply ignores the issue in his opening brief. In his reply brief he concedes “the facts of the case [make it] difficult to unpack the legal issues from the equitable issues.” Rather than attempt to provide a reasoned argument on how to do so, however, he simply

asserts “this case should be reversed in its entirety regardless of whether the causes of action were legal or equitable in nature . . . .” We hold he has waived the constitutional issue. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862 [“Appellate briefs must provide argument and legal authority for the positions taken. ‘When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.’”].)



## **DISPOSITION**

The judgment is affirmed. William is awarded his costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

CURREY, J.

WE CONCUR:

MANELLA, P. J.

WILLHITE, J.